

**Interpretation of the Director
Under Seattle Municipal Code Title 23**

Regarding the Use of the

Property at

2600 1st Avenue

**DPD Interpretation No. 15-002C
(DPD Project No. 3023331)**

Background

This interpretation was requested by attorney Courtney A. Kaylor on behalf of her client Total Outdoor Corporation and involves an on-premises sign permit issued to New Pacific for an on-premises wall sign at 2600 1st Avenue. The on-premises wall sign is non-conforming as to maximum area allowed under current regulations. The question for interpretation is whether the nonconforming area of the existing on-premises wall sign may be maintained even if a new on-premises wall sign permit for the sign is obtained by a different entity. The current content of the sign is not at issue in this interpretation.

Findings of Fact

1. The subject property is addressed in Department of Planning and Development (DPD) records as 2600 1st Avenue. According to the Geocortex land use map maintained by DPD, the property is described as Lot 1, Block 20, Bell and Denny's 1st Addition.
2. The property is zoned DMR/R 125/65: Downtown Mixed Residential/ Residential with height limits as described in the Seattle Municipal Code (SMC) 23.49.008.C.2 and uses described in SMC 23.49.140.
3. The subject on-premises wall sign is located on the northwest facing wall of an existing apartment building on the property, which is identified as the New Pacific Building. The structure is owned by New Pacific LLC. New Pacific submitted plans to DPD to obtain an on-premises wall sign permit that would allow them to advertise the New Pacific Building and space for lease. Those plans were approved under Permit No. 6258539, issued on June 10, 2011, with dimensions of 34 feet by 25 feet for an area of 850 square feet. The permit, applied for on August 20, 2010, described installation of a non-illuminated hanging wall sign for the New Pacific Building. Permit No. 6258539 was issued to New Pacific as the business establishment using the on-premises sign and owner of the building. There is nothing in the record to indicate that the business establishment has changed since Permit No. 6258539 was issued; nor is there evidence in the record that the size of the sign has been expanded or extended since Permit No. 6258539 was issued.

4. SMC Section 23.55.034.D.2.a regulates signs in the Downtown zones which provides, in part:

The maximum area for each wall sign is 672 square feet.

5. Section 23.84A.036 defines “sign, on-premises” as follows:

“sign, on-premises” means a sign or sign device used solely by a business establishment on the lot where the sign is located that displays either: (1) commercial messages that are strictly applicable only to a use of the premises on which it is located, including signs or sign devices indicating the business transacted, principal services rendered, goods sold or produced on the premises, name of the business, and name of the person, firm or corporation occupying the premises; or (2) noncommercial messages. For the purposes of this definition, "business transacted, principal services rendered, goods sold or produced on the premises" does not include: (a) the sale or donation of a gift card, gift certificate, coupon or other document that can be exchanged in part or whole for an item or good that is not directly sold or produced or a service rendered where the gift card, gift certificate, coupon or other document is sold or donated; or (b) access by phone, computer or any other device to allow a person to obtain an item or good that is not directly sold or produced or a service rendered where the access by phone, computer or other device is offered. This definition does not include signs located within a structure except those signs oriented so as to be visible through a window.

6. Section 23.84A.036 also defines “sign, wall” as follows:

“sign, wall” means any sign attached to and supported by a wall of a structure, or projected on or onto a wall of a building or structure, or suspended from the roof of a building or structure, with the exposed face of the sign on a plane approximately parallel to the plane of the wall, or any sign painted directly on a building facade.

7. The current maximum area standard in Section 23.55.034 for on-premises wall signs in the DMR/R 125/65 zone was established by Seattle City Ordinance No. 124457, effective May 2, 2014, which provides, in part:

AN ORDINANCE relating to the regulation of wall signs, amending Sections 23.55.030, 23.55.034, 23.55.036, 23.84A.036 and 23.90.018 of the Seattle Municipal Code; enacting and amending standards for on-premises wall signs in commercial, Seattle Mixed, industrial and downtown zones; clarifying the definition of wall signs and on-premises signs.

WHEREAS, Seattle Municipal Code Chapter 23.55 ("Sign Code") regulates signs for the purposes set out in Section 23.55.001; and

WHEREAS, the intent of Seattle's Sign Code is to "protect the public interest and safety," including reducing driver distraction, to "encourage the design of signs

that attract and invite rather than demand the public's attention, and to curb the proliferation of signs," all while providing opportunities for communicating information; and

WHEREAS, the Sign Code authorizes signs that are in the public interest, such as on-premises signs; and

WHEREAS, under the Sign Code, on-premises signs are authorized to carry messages about a business activity, product or service offered on the premises where the sign is located or non-commercial messages; and

WHEREAS, the Sign Code prohibits off-premises signs displaying messages about a business activity, product or service not available on the premises where the sign is located, except for a limited number of registered billboards; and

WHEREAS, the Comprehensive Plan's Urban Design Policies for Downtown seek to regulate signs to "reduce visual clutter," "enhance the appearance of downtown," and "generally discourage signs not oriented to persons at the street level"; and

WHEREAS, it is the City of Seattle's ("City") intent that any complete on-premises wall sign permit application that is received by the Department of Planning and Development ("DPD") prior to the effective date of this ordinance for a sign that is larger than 672 square feet in area, and subsequently approved by DPD, shall be considered nonconforming to the new area limit and allowed to remain subject to Sections 23.42.112 and 23.84A.036 of the Seattle Municipal Code; and

WHEREAS, it is the City's intent that all permitted on-premises signs must conform to the definition of "sign, on-premises" in Section 23.84A.036 of the Seattle Municipal Code, as amended by this ordinance, by the effective date of this ordinance, except where DPD has previously and expressly approved (1) the sale or donation of gift cards, gift certificates, coupons or other documents that can be exchanged in part or whole for an item or good that is featured on an on-premises sign but not directly sold or produced or a service rendered where the gift card, gift certificate, coupon or other document is sold or donated; or (2) providing access to a phone, computer or any other device to allow a person to obtain an item or good that is featured on an on-premises sign but not directly sold or produced or a service rendered where the access by phone, computer or other device is offered. Additionally, the business establishment associated with the on-premises sign permit must be able to document that (a) it is the same business establishment that received the original permit for the on-premises sign and (b) the copy displayed or the item or good featured on the sign is the same as that shown on the plans associated with the original approved sign permit. Business establishments that are unable to meet the above-described standards (a) and (b) must conform their on-premises signs to the definition of "sign, on-premises" in Section 23.84A.036 of the Seattle Municipal Code, as amended by this ordinance, by the effective date of this ordinance; NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

* * *

Section 3. Section 23.55.034 of the Seattle Municipal Code, last amended by Ordinance 124378, is amended as follows:

23.55.034 Signs in downtown zones

D. On-premises Signs.

2. There ~~((shall be))~~ is no maximum area limit~~((s))~~ for on-premises signs, except ~~((for signs))~~ as follows:

a. The maximum area for each wall sign is 672 square feet; and

* * *

8. Section 23.84A.026 defines "Nonconforming to development standards" in part as follows:

a structure, site or development that met applicable development standards at the time it was built or established, but that does not now conform to one or more of the applicable development standards.

9. Section SMC 23.42.102 provides in part as follows:

Any use or development for which a permit was obtained is considered to be established.

10. Section 23.42.112.A provides in part as follows:

A structure nonconforming to development standards may be maintained, renovated, repaired or structurally altered but may not be expanded or extended in any manner that increases the extent of nonconformity or creates additional nonconformity.

Conclusions

1. Prior to the May 2, 2014 amendment to the Seattle Land Use Code, which limited the area of on-premises wall signs to a maximum of 672 square feet (Find of Fact No. 7), the Code did not provide any specific area limits for the size of on-premises wall signs in the DMR zone, which is the zone where the subject sign is located.
2. Permit No. 6258539 was issued for the sign on the northwest facing wall of the building at 2600 1st Avenue (Finding of Fact No. 3) prior to May 2, 2014. Because there were no area limits for on-premises wall signs in the DMR zone at the time Permit No. 6258539 was issued, the 850 square foot area conformed to the Code at the time the permit was issued. The available record suggests that the on-premises sign permitted in Permit No. 6258539 was never removed or reduced in size.

3. On June 10, 2011, Permit No. 6258539 was issued to New Pacific for an 850 square foot sign. New Pacific was identified as the business establishment using the on-premises sign and owner of the building. The available record suggests that New Pacific remains the business establishment using the on-premises sign and is the owner of the building to which the sign is attached, and there is no evidence that the sign has changed in area from the configuration described in Permit No. 6258539. Accordingly, Permit No. 6258539 is still in effect.
4. The Code does not prohibit or prevent the continuance of existing development standard nonconformities where the nonconformity is not expanded or extended (Finding of Fact No. 13). For example, a house nonconforming to development standards with respect to side yard setback requirements is allowed to remain, even if a new owner purchases the house. The Code contemplates the continuance of nonconformity to development standards where the nonconformity has been maintained and has not been expanded or extended. Otherwise, Section 23.42.112.A would not be needed to ensure that such nonconformities were properly regulated. If the on-premises sign is reduced in size, any future permit will be limited to the reduced area size. If the sign is removed entirely, any future permit will be limited to the area maximum in the Code that is in effect at the time of the new permit application.
5. The on-premises sign on the northwest wall of the New Pacific Building is nonconforming to development standards because it exceeds the current maximum area requirement 672 square feet for on-premises wall signs in the DMR zone. A new business establishment may obtain a permit for the sign and maintain the wall sign as provided in Permit No. 6258539 as long as the sign has not been removed from its location or reduced in size before the new business has submitted its on-premises wall sign application and the new business establishment is a business located on the lot where the sign is located.

Decision

The on-premises sign on the northwest facing wall of the New Pacific Building located at 2600 1st Avenue was established as a nonconforming on-premises sign with an area of 850 square feet by Permit No. 6258539. The sign is nonconforming to the area standard for the DMR zone as provided in Seattle City Ordinance No. 124457 (maximum area of 672 square feet). The on-premises sign may be maintained at its current size by a new business establishment as long as the sign has not been removed or reduced in size prior to the submission of the application by the business and the new business establishment is located on the lot where the sign is located, subject to approval by the Department of Neighborhoods and the Pioneer Square Preservation Board.

Entered this 1st day of February, 2016.

Signature on File

David G. Graves, Senior Land Use Planner
Department of Planning and Development